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MACHINISTS & AEROSPACE WORKERS, DISTRICT
LODGE 190, LOCAL LODGE 1546, AFL-CIO, AND
INTERNATIONAL ASSOCIATION OF MACHINISTS AND
AEROSPACE WORKERS, DISTRICT LODGE 190, LOCAL
LODGE 1414, AFL-CIO

UNITED STATES OF AMERICA
NATIONAL LABOR RELATIONS BOARD

EVERPORT TERMINAL SERVICES

and

INTERNATIONAL ASSOCIATION OF
MACHINISTS & AEROSPACE WORKERS,
DISTRICT LODGE 190, LOCAL LODGE 1546,
AFL-CIO AND INTERNATIONAL ASSOCIATION
OF MACHINISTS AND AEROSPACE WORKERS,
DISTRICT LODGE 190, LOCAL LODGE 1414,
AFL-CIO

and

INTERNATIONAL LONGSHORE AND
WAREHOUSE UNION

and

INTERNATIONAL ASSOCIATION OF
MACHINISTS & AEROSPACE WORKERS,
DISTRICT LODGE 190, LOCAL LODGE 1546,
AFL-CIO, AND INTERNATIONAL ASSOCIATION
OF MACHINISTS AND AEROSPACE WORKERS,
DISTRICT LODGE 190, LOCAL LODGE 1414,
AFL-CIO

Case 32-CA-172286

Case 32-CB-172414

CROSS-EXCEPTIONS

No.	Page	Cross-Exception
1	74-79; 82:10-15, 82:2-8 79-85, Appendix A, page 3	To the remedy, because it fails to include Brent Zieska and Michael Tavares
2	74-79; 79-85	The Remedy and Order are inadequate.
3		<p>To the failure of the Administrative Law Judge to order the following remedies as to Everport Terminal Services:</p> <ol style="list-style-type: none"> 1. Intranet postings; 2. Mailing of the Board Notice to all employees and former employees; 3. Mailing of the Board decision so that the employees will be able to understand the reasons for the Board remedy; 4. Appropriate language in the notice in which the employer acknowledges its unfair labor practice such as: We have been found to have unlawfully recognized the ILWU for the mechanics whom we employed. We have been found to have unlawfully applied the PCL&CA to you when you were hired. We have been found to have unlawfully refused to hire qualified mechanics because of their affiliation with the IAM. 5. Notice posting for the period of time from when the violation began until the notice is actually posted; 6. To the failure of the Administrative Law Judge to require a Notice reading to the employees. Additionally, representatives of the Charging Party should be present and allowed to tape and video-record the reading; 7. The Posting should be at all facilities including on the West Coast; 8. The employer should email, on a regular basis, the notice of the Board Decision to each employee since it uses email system for distribution of employment related matters; 9. To the extent the employer conducts employee meetings, it should be required to read and discuss the notice at such meetings on at least three occasions; 10. The employees should be afforded work time to read the Board's Decision and the Notice; 11. The employer should allow five hours of time for employees to communicate about Section 7 matters; 12. Post the Notice on its Website with a link to the Decision on the Board's website; 13. To the failure of the Judge to require that at any Notice reading, the Charging Party be present and that it be allowed to record and videotape the Notice reading; 14. Notify the Federal Maritime Commissioner, which regulates the carriers; 15. Notify all state regulatory bodies of its unlawful action; 16. The unlawful provisions and any reference to them should be expunged not just rescinded. <i>UPMC</i>, 362 N.L.R.B. No. 191 (2015);

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		<p>17. Everport must withdraw recognition from the ILWU and not be allowed to recognize the ILWU without a Board conducted election. <i>Duane Reade, Inc.</i>, 338 N.L.R.B. 943, 944-45 (2003), <i>enforced</i>, 99 F.App'x 240 (D.C. Cir. 2004); <i>Dairyland USA Corp.</i>, 347 N.L.R.B. 310, 314, <i>enforced sub nom. NLRB v. Local 348-S, United Food & Commercial Workers Int'l Union</i>, 273 F.App'x 40 (2d Cir. 2008);</p> <p>18. The employees should be made whole including all consequent damages;</p> <p>19. The employer should reimburse the Machinists Union the dues that were not deducted that would have occurred had ETS recognized the Machinists Union. Such reimbursement should occur without deduction from the back pay ordered to be paid the employees. <i>A.W. Farrell & Son, Inc.</i>, 361 N.L.R.B. No. 162 (2014);</p> <p>20. Posting of the Board's Employee Notice for five years. See, https://www.nlr.gov/poster.</p> <p>21. Require access and meeting rights between the IAM and the employees.</p>
4		<p>The remedies as to the ILWU:</p> <p>1. To the failure of the Administrative Law Judge to require the ILWU to reimburse the employer for the loss it suffered because it caused the employer to unlawfully make payments to ILWU plans and failed to make similar payments to the Machinists Plans;</p> <p>2. To the failure of the Administrative Law Judge to require the ILWU to make Everport Terminal Services whole for other losses;</p> <p>3. To the failure of the Administrative Law Judge to provide that it recognizes the dues check off signed by employees who were working for the predecessor employer and to make the Union whole for the loss of those dues check off monies without requiring employees to reimburse the Union;</p> <p>4. To the failure of the Administrative Law Judge to require that the Notice specifically state the violations found;</p> <p>5. To the failure of the Remedy and Order to require to mail the Notice and Decision to all employees who worked at Everport during the period of January 5, 2015 until compliance;</p> <p>6. To the failure of the Administrative Law Judge to require the ILWU to utilize any social media that it uses to post the Notice and Decision and advise the public and its members of the availability of the decision;</p> <p>7. To the failure of the Administrative Law Judge to prohibit the ILWU from accepting recognition under the PCL&CA for any bargaining unit or group of unrepresented or represented by another union employees on a coast-wide basis without first winning an NLRB election;</p> <p>9. To the failure of the Administrative Law Judge to require that the ILWU provide an complete list of all employees who worked at the Everport Terminals site from December 5, 2015 including contact information, including email;</p> <p>10. To the failure of the Administrative Law Judge to require that the ILWU reimburse employees not only for dues, but also for fines or any other payments made to the ILWU.</p> <p>11. To the failure of the ALJ to order that the notice and Decision be read at union meetings.</p>

No.	Page	Cross-Exception
	71:25-31	To the suggestion that counsel's conduct violates Section 102.177. To the failure of the ALJ to complement counsel for the Charging Party for his exemplary conduct including sense of humor throughout the hearing. To the suggestion in the Decision that this be referred to the General Counsel since it forces the Board to consider this issue without the proceedings under Section 102.77 having been completed if necessary. To the suggestion in its entirety since the investigations under Section 102.77 are not publically disclosed and counsel for Charging Party has no way to publicize this reference since he wont be able to cite a decision by the General Counsel rejecting any action under Section 102.77
6	71:25-31	To the failure of the Administrative Law Judge to recommend that the conduct of Akrotirianakis violated the rule and that sanctions should be imposed on him. To the failure of the ALJ to find that counsel Akrotirianakis was too thinned skinned to be an effective litigator. To the failure of the ALJ to find that Akrotirianakis was inexperienced in NLRB issues and proceedings which caused him to be so insecure. To the suggestion of the ALJ that baiting is improper particularly where the fish is hungry or the lure is great.
7	71:1-5	The Administrative Law Judge erroneously refused to allow the Charging Party to demonstrate that the PCL&CA is an unlawful members-only agreement.
8	41: 15-48	To the failure of the ALJ to find that PAOH is a perfectly clear success to PCMC.
9	83:12-84:10	To the failure of the Administrative Law Judge to draft a broad order as ordered in her Decision.
10	83:13-29	To the failure of the Administrative Law Judge to issue a Broad Order in the cease and desist language.
11	71:5-15	The Administrative Law Judge erroneously refused to allow the Charging Party to demonstrate that the dispatch procedures are an unlawful members-only agreement.
12	71:515	The Administrative Law Judge erroneously refused to allow the Charging Party to prove that the PCL&CA discriminates against Herman-Flynn mechanics.
13	71:5-15	The Administrative Law Judge erroneously refused to allow the Charging Party to prove that probationary mechanics and registered B mechanics were

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		required to pay the hiring hall costs were discriminated against and forced to pay unlawful exaction.
14	71:5-15	The Administrative Law Judge erroneously refused to allow the Charging Party to prove that the Pacific Maritime Association is not a <i>bona fide</i> multi-employer association.
15	71:5-15	The Administrative Law Judge erroneously refused to allow the Charging Party to prove that the PCL&CA violates Section 8(e) of the Act.
16	71:5-15	The Administrative Law Judge erroneously refused to allow the Charging Party to prove that the PCL&CA violates anti-trust laws.

Dated: November 26, 2018

Respectfully submitted,

WEINBERG, ROGER & ROSENFELD
A Professional Corporation

By: /s/ David A. Rosenfeld
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PROOF OF SERVICE

I am a citizen of the United States and resident of the State of California. I am employed in the County of Alameda, State of California, in the office of a member of the bar of this Court, at whose direction the service was made. I am over the age of eighteen years and not a party to the within action.

On November 26, 2018, I served the following documents in the manner described below:

CROSS-EXCEPTIONS

- ☒ (BY ELECTRONIC SERVICE) By electronically mailing a true and correct copy through Weinberg, Roger & Rosenfeld's electronic mail system from kkempler@unioncounsel.net to the email addresses set forth below.

On the following part(ies) in this action:

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I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed on November 26, 2018, at Alameda, California.

/s/ Karen Kempler
Karen Kempler